

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3858 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
to Metropolitan Magistrate Court No. 6,
Ahmedabad
to all Metropolitan Magistrates and JMFCs.

BHAVIN NATVARLAL PATEL

Versus

REGIONAL PASSPORT OFFICER

Appearance:

MR MID PATEL for Petitioner
MS PROMILA SAFAYA for Respondent No. 1
MR AMIT J SHAH for Respondent No. 2
SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/10/97

ORAL JUDGEMENT

This petition under Article 226 of the
Constitution is filed by Bhavin Natvarlal Patel through

his sister and Power of Attorney Holder Vaishali Natvarlal Patel for change of birth date from June 23, 1975 to June 23, 1978 in the petitioner's Passport.

2. Petitioner Bhavin Natvarlal Patel was granted a passport on February 12, 1982 and thereafter another passport was issued on December 10, 1991 with validity period upto December 9, 2001. In the aforesaid passports, the petitioner's birth date was mentioned as June 23, 1975. The petitioner submitted that the birth date as mentioned in these passports was on the strength of School Leaving Certificate, wherein the petitioner's birth date was mentioned as June 23, 1975, but the correct birth date is June 23, 1978 as mentioned in the birth certificate issued by the Ahmedabad Municipal Corporation. The petitioner had, therefore, requested the passport Authority to grant fresh Passport with correct birth date as June 23, 1978, as per the birth certificate issued by the Ahmedabad Municipal Corporation, but the passport Authority required a Court order and hence, the present petition is filed.

3. This Court issued notice to the Regional Passport Officer and subsequently also to the Ahmedabad Municipal Corporation, Birth and Death Registration Department and to the School which had issued the School Leaving Certificate. This Court compared the xerox copies of the School Leaving Certificate - one produced by the petitioner before the learned Metropolitan Magistrate, Court NO. 6, who passed order dated April 15, 1997 for making entry in the birth register as June 23, 1978 on the basis of a photostat copy of School Leaving Certificate showing the petitioner's birth date as June 23, 1978 and the other copy which is produced in this petition at Annexure "C" showing the birth date as June 23, 1975. Both the copies are photostat, but there are material discrepancies, though each copy purports to be a photostat copy of the same School Leaving Certificate No. 120 of 1989-90 issued on January 6, 1990.

4. The Municipal Corporation has placed on record after having verified the record of June 23, 1975 that the petitioner's originally registered birth date was June 23, 1975 in the Municipal record and thus, it appears that the petitioner Bhavin acting through his another sister Shilpa obtained an order of the learned Magistrate for entering his birth date in the Municipal register as June 23, 1978 and on the basis thereof another sister of the petitioner has tried to obtain correction in the Passport.

5. After the aforesaid attempt to abuse the process of this Court was noticed by this Court, Vaishali Natvarlal Patel, sister of the petitioner, has filed an affidavit dated September 25, 1997 which does not state exactly as to who is responsible for the mischief played earlier for getting an order from the learned Metropolitan Magistrate by possible interpolation with the School Leaving Certificate. It is stated that Shilpa, elder sister of Vaishali and Bhavin, had made such an application before the learned Metropolitan Magistrate on information and instructions received from Bhavin who is in the U.S.A. and that Shilpa had no personal knowledge nor had she made any enquiry.

6. This Court had earlier issued suo motu notice for cancellation of the order passed by the learned Metropolitan Magistrate, Court No. 6 on April 15, 1997 in Misc. Application No. 348 of 1997. Having perused the record of the said proceedings, it appears that the learned Metropolitan Magistrate passed the order for entering the birth date of Bhavin in the Municipal record as June 23, 1978 on the basis of oral evidence given by Bhavin's sister Shilpa Natvarlal Patel, aged about 31 years and a photostat copy of the School Leaving Certificate issued by Sadhana Vinay Mandir bearing No. 120 of 1989-90 dated January 6, 1990 wherein Bhavin's birth date was shown as June 23, 1978.

In view of the observations already made by this Court in the order dated September 1, 1997 and hereinabove, this appears to be a fit case for suo motu setting aside the aforesaid order of the learned Metropolitan Magistrate. It is required to be mentioned at this stage that the learned Metropolitan Magistrate has simply relied upon the oral testimony of an interested witness who did not produce the original School Leaving Certificate, but only a photostat copy. The learned Metropolitan Magistrate ought to have made further enquiries and called for the original record of the School. The learned Magistrate ought to have realized that whenever such applications are made for making entry in the birth register or for making changes in the birth date already recorded in the birth register, it is ordinarily done with a view of achieve some particular purpose like getting longer tenure of service or for making changes in the Passport. The learned Magistrates are, therefore, expected to exercise due care and caution and not to mechanically pass the orders for making such entries in the birth register or to give directions for making corrections in the birth register.

Specific queries ought to be put to the applicants and/or the witnesses as to the purpose for which the correction is sought and also further to test the veracity of the record by calling for the original School record, if reliance is placed on School Leaving Certificate or to call for record from the employer to examine as to on what basis the entry regarding birth date was made in the service record.

7. Since the order is being quashed as stated above, in order to make sure that the petitioner does not make use of the order of the learned Metropolitan Magistrate passed on April 15, 1997 and the consequential birth certificate issued by the Ahmedabad Municipal Corporation, it is directed that the Regional Passport Officer, Ahmedabad shall forward a copy of this order to the Indian Embassy in the United States of America and also to the Office of the Consular General of United States of America in India.

8. At the hearing of the petition, Mr P.R. Nanavati, learned counsel for the petitioner submitted that Bhavin and both his sisters Shilpa as well as Vaishali have realized that they ought not to have made any attempt to change the birth date from June 23, 1975 to June 23, 1978 and that, therefore, Bhavin, Shilpa and Vaishali shall file undertakings before this Court that they shall not use the original birth certificate or any copy thereof issued by the Ahmedabad Municipal Corporation showing the birth date of Bhavin as June 23, 1978 or any school leaving certificate showing his birth date as June 23, 1978 and that they will only use birth certificate/school leaving certificate showing Bhavin's birth date as June 23, 1975.

9. It is further directed that the petitioner shall pay exemplary costs of Rs. 10,000/- (Ten thousand only) to the Regional Passport Officer, Ahmedabad and an amount of Rs. 10,000/- (Ten thousand only) by way of exemplary costs to the Ahmedabad Municipal Corporation. The aforesaid amounts of costs shall be paid to the respective respondents latest by November 30, 1997.

10. It is clarified that this order does not preclude the learned Metropolitan Magistrate from initiating appropriate proceedings against the concerned persons for producing false or fabricated documents in judicial proceedings.

11. Subject to the aforesaid directions and the aforesaid clarification, this petition is summarily dismissed.
